

Federal Railroad Administration, DOT

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(f) Subject to such objections to the questions and answers as were noted at the time of taking the deposition and as would be valid were the witness personally present and testifying, such deposition may be offered in evidence by any party to the proceeding.

[54 FR 42906, Oct. 18, 1989]

§ 209.9 Filing.

All materials filed with FRA or any FRA officer in connection with a proceeding under subpart B, C, or D of this part shall be submitted in duplicate to the Assistant Chief Counsel for Safety, (RCC-30), Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, except that documents produced in accordance with a subpoena shall be presented at the place and time specified by the subpoena.

[54 FR 42906, Oct. 18, 1989, as amended at 74 FR 25171, May 27, 2009]

§ 209.11 Request for confidential treatment.

(a) This section governs the procedures for requesting confidential treatment of any document filed with or otherwise provided to FRA in connection with its enforcement of statutes or FRA regulations related to railroad safety. For purposes of this section, “enforcement” shall include receipt of documents required to be submitted by FRA regulations, and all investigative and compliance activities, in addition to the development of violation reports and recommendations for prosecution.

(b) A request for confidential treatment with respect to a document or portion thereof may be made on the basis that the information is—

(1) Exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from public disclosure.

(c) Any document containing information for which confidential treatment is requested shall be accompanied at the time of filing by a statement justifying nondisclosure and referring to the specific legal authority claimed.

(d) Any document containing any information for which confidential treatment is requested shall be marked “CONFIDENTIAL” or “CONTAINS CONFIDENTIAL INFORMATION” in bold letters. If confidentiality is requested as to the entire document, or if it is claimed that nonconfidential information in the document is not reasonably segregable from confidential information, the accompanying statement of justification shall so indicate. If confidentiality is requested as to a portion of the document, then the person filing the document shall file together with the document a second copy of the document from which the information for which confidential treatment is requested has been deleted. If the person filing a document of which only a portion is requested to be held in confidence does not submit a second copy of the document with the confidential information deleted, FRA may assume that there is no objection to public disclosure of the document in its entirety.

(e) FRA retains the right to make its own determination with regard to any claim of confidentiality. Notice of a decision by the FRA to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

[42 FR 56742, Oct. 28, 1977, as amended at 70 FR 11094, Mar. 7, 2005]

§ 209.13 Consolidation.

At the time a matter is set for hearing under subpart B, C, or D of this part, the Chief Counsel may consolidate the matter with any similar matter(s) pending against the same respondent or with any related matter(s) pending against other respondent(s) under the same subpart. However, on certification by the presiding officer that a consolidated proceeding is unmanageable or otherwise undesirable, the Chief Counsel will rescind or modify the consolidation.

[54 FR 42906, Oct. 18, 1989]

§ 209.15 Rules of evidence.

The Federal Rules of Evidence for United States Courts and Magistrates

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shall be employed as general guidelines for proceedings under subparts B, C, and D of this part. However, all relevant and material evidence shall be received into the record.

[54 FR 42907, Oct. 18, 1989]

§ 209.17 Motions.

Motions shall be in writing, filed with the presiding officer, and copies served upon the parties in accordance with § 209.5, except that oral motions may be made during the course of any hearing or appearance before the presiding officer. Each motion shall state the particular order, ruling, or action desired and the grounds therefor. Unless otherwise specified by the presiding officer, any objection to a written motion must be filed within 10 days after receipt of the motion.

[54 FR 42907, Oct. 18, 1989]

Subpart B—Hazardous Materials Penalties

CIVIL PENALTIES

§ 209.101 Civil penalties generally.

(a) Sections 209.101 through 209.121 prescribe rules of procedure for the assessment of civil penalties pursuant to the Federal hazardous materials transportation safety law, 49 U.S.C. Chapter 51.

(b) When the FRA has reason to believe that a person has knowingly committed an act which is a violation of any provision of subchapter B or C of chapter I, subtitle B of this title for which the FRA exercises enforcement responsibility or any waiver or order issued thereunder, it may conduct a proceeding to assess a civil penalty.

[42 FR 56742, Oct. 28, 1977, as amended at 61 FR 38646, July 25, 1996]

§ 209.103 Minimum and maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, subchapter A or C of chapter I, subtitle B, of this title, or a special permit or approval issued under subchapter A or C of chapter I, subtitle B, of this title is liable for a civil pen-

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alty of at least \$250 but not more than \$55,000 for each violation, except that—

(1) The maximum civil penalty for a violation is \$110,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property and

(2) A minimum \$450 civil penalty applies to a violation related to training.

(b) When the violation is a continuing one, each day of the violation constitutes a separate offense. 49 U.S.C. 5123.

(c) The maximum and minimum civil penalties described in paragraph (a) above apply to violations occurring on or after September 27, 2010.

[71 FR 77294, Dec. 26, 2006, as amended at 75 FR 43842, July 27, 2010]

§ 209.105 Notice of probable violation.

(a) FRA, through the Chief Counsel, begins a civil penalty proceeding by serving a notice of probable violation on a person charging him or her with having violated one or more provisions of subchapter A or C of chapter I, subtitle B of this title. Appendix B to this part contains guidelines used by the chief counsel in making initial penalty assessments.

(b) A notice of probable violation issued under this section includes:

(1) A statement of the provision(s) which the respondent is believed to have violated;

(2) A statement of the factual allegations upon which the proposed civil penalty is being sought;

(3) Notice of the maximum amount of civil penalty for which the respondent may be liable;

(4) Notice of the amount of the civil penalty proposed to be assessed;

(5) A description of the manner in which the respondent should make payment of any money to the United States;

(6) A statement of the respondent's right to present written explanations, information or any materials in answer to the charges or in mitigation of the penalty; and

(7) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(c) The FRA may amend the notice of probable violation at any time prior to the entry of an order assessing a civil